

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STANLEY PACE,

V. **Fannin,**

JORAN LUNDH,

Defendant.

CASE NO. C18-5965 BHS

ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT AND VACATING
ENTRY OF DEFAULT

This matter comes before the Court on Plaintiff Stanley Pace's motion for default judgment, Dkt. 18, and the Court's order to show cause, Dkt. 23.

Pace seeks a declaratory judgment that his registration and use of the domain name [lascal.com] does not violate Defendant Joran Lundh's rights and that Pace may keep the name. Dkt. 1. In June 2019, Judge Ronald B. Leighton¹ granted Pace's motion for alternative service, allowing Pace to serve Lundh via foreign service of process. Dkt. 8. In October 2019, default was entered against Lundh. Dkt. 12. Pace then moved for default judgment, Dkt. 13, which the Court denied, Dkt. 14. On March 5, 2021, Pace

¹ This case was transferred to the undersigned following Judge Leighton's retirement from the federal bench. Dkt. 15.

1 renewed his motion for default judgment, which is currently pending before the Court.
2 Dkt. 18.

3 In April 2021, the Court received an email from Lundh stating that he had not
4 been to his Hong Kong residence for over a year due to the COVID-19 pandemic and is
5 currently residing in Thailand, Dkt. 22, and the Court construed the email as Lundh's
6 appearance, *see* Dkt. 23 at 2. The Court ordered Lundh to show cause why default should
7 be set aside or why default judgment should not enter. *Id.* In May 2021, Lundh responded
8 to the Court's show cause order, explaining that he is entitled to get any law
9 correspondence in Swedish pursuant to the Hague Convention. Dkt. 24.

10 Based on the Court's own research, it appears that Lundh is correct. As both the
11 United States and Sweden are signatories to the Hague Service Convention, the Hague
12 Service Convention provides "the exclusive means for service of process." *See*
13 *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 706 (1988). The primary
14 service method under the Hague Service Convention is through the signatory's Central
15 Authority. Convention on the Service Abroad of Judicial and Extrajudicial Documents in
16 Civil or Commercial Matters arts. 2, 3, 5, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No.
17 6638 ("Hague Service Convention"). After receiving a request, the Central Authority
18 serves the documents through its own internal service of process mechanisms. *Id.* art. 5.
19 If a State does not object, Article 10(a) permits foreign persons "the freedom to send
20 judicial documents, by postal channels, directly to persons abroad." *Id.* art. 10(a).

21 Under Article 5 of the Hague Convention, the Central Authority of a signatory
22 nation may require the document to be served to be written in or translated into the

1 official language of the state addressed. *Id.* art. 5 (“[T]he Central Authority may require
2 the document to be written in, or translated into, the official language or one of the
3 official languages of the State addressed.”). Though case law specific to Sweden is
4 limited, two courts have concluded that Sweden requires certain judicial documents to be
5 translated, including summons and complaints. *See Borschow Hosp. & Med. Supplies,*
6 *Inc. v. Burdick-Siemens Corp.*, 143 F.R.D. 472, 480 (D.P.R. 1992) (“service must be
7 made in the language of the recipient in order to be effective”); *Johnson v. Pfizer Inc.*, 32
8 Conn. L. Rptr. 207, 2002 WL 1041984, at *2 (Conn. Super. Ct. 2002).

9 Pace did not translate the complaint or summons and therefore has not perfected
10 service. *See* Dkt. 9 and exhibits attached thereto. His motion for default judgment, Dkt.
11 18, is therefore **DENIED without prejudice**.

12 And pursuant to Federal Rule of Civil Procedure 55(c), the Court orders that the
13 entry of default, Dkt. 12, shall be set aside. Rule 55(c) allows a court to set aside an entry
14 of default for good cause. To determine “good cause”, “a court must ‘consider[] three
15 factors: (1) whether [the party seeking to set aside the default] engaged in culpable
16 conduct that led to the default; (2) whether [it] had [no] meritorious defense; or (3)
17 whether reopening the default judgment would prejudice’ the other party.” *United States*
18 *v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir.
19 2010) (quoting *Franchise Holding II, LLC v. Huntington Restaurants Group, Inc.*, 375
20 F.3d 922, 925–26 (9th Cir. 2004) (alterations in original)). The standard to set aside an
21 entry of default is disjunctive, meaning that a finding of one of the factors is sufficient is
22 sufficient to set aside the entry. *See id.* Reopening the default would not prejudice Pace as

1 it would allow him to perfect service, and “judgment by default is a drastic step
2 appropriate only in extreme circumstances; a case should, whenever possible, be decided
3 on the merits.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). Indeed, other courts have
4 acknowledged that “[d]efault cannot be entered where there was insufficient service of
5 process.” *Scott v. District of Columbia*, 598 F.Supp.2d 30, 36 (D.D.C. 2009).

6 Therefore, Pace’s motion for default judgment, Dkt. 18, is **DENIED without**
7 **prejudice** and the Entry of Default dated October 17, 2019, Dkt. 12, shall be
8 **VACATED**. Pace shall serve Lundh in accordance with this Order and the Hague
9 Convention no later than **August 13, 2021**.

10 **IT IS SO ORDERED.**

11 Dated this 1st day of July, 2021.

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BENJAMIN H. SETTLE
United States District Judge
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